

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Leighton Enterprises, Inc.)	File No. EB-04-IH-0492
)	NAL/Acct. No. 200532080128
Licensee of Station KBOT(FM),)	FRN 0002589216
Pelican Rapids, Minnesota)	Facility ID No. 51059
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 17, 2005**Released: March 17, 2005**

By the Chief, Investigations and Hearings Division:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Leighton Enterprises, Inc. ("Leighton"), licensee of Station KBOT(FM), Pelican Rapids, Minnesota, has apparently violated section 73.1201 of the Commission's rules¹ by willfully and repeatedly broadcasting station identification announcements that did not contain the required call sign followed by the station's community of license. Based on our review of the facts and circumstances in this case, we conclude that Leighton is apparently liable for a forfeiture in the amount of \$5,000.

II. BACKGROUND

2. On September 1, 2004, the Enforcement Bureau received a complaint alleging that Station KBOT(FM) had violated section 73.1201 of the Commission's rules. Specifically, the complainant alleges that since September 2003, Station KBOT(FM) changed its station identification announcements by substituting a promotional message for the station's call letters and community of license. The complainant states that she notified Leighton of its failure to comply with section 73.1201, but that the station did not revise its announcements.

3. In response to an Enforcement Bureau letter of inquiry,² Leighton states that, due to an inadvertent programming error, since September 22, 2004, there have been many instances in which Station KBOT(FM) broadcast station identification announcements that did not contain the call letters and its

¹ 47 C.F.R. § 73.1201.

² Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Leighton Enterprises, Inc., dated November 22, 2004.

community of license.³ Leighton concedes that, with the exception of a three-hour window of live programming each day, all of its station identification announcements were deficient from September 22 until December 7, 2004, when Leighton corrected its station identification announcement to include the required call letters and the community of license. Leighton states that since that date, Station KBOT(FM) has broadcast station identification announcements that comply with section 73.1201 at all times. Leighton does not acknowledge any station identification problems prior to September 2004. Leighton provided a compact disc recording of the corrected announcement.

III. DISCUSSION

4. Section 73.1201 of the Commission's rules provides that the "[o]fficial station identification shall consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location" and shall be broadcast at the beginning and ending of each time of operation, and hourly as close to the hour as feasible.⁴ Leighton acknowledges that it broadcast deficient station identification announcements 21 times per day over a 10-week period. Therefore, we find that Leighton apparently violated section 73.1201 of the Commission's rules by willfully and repeatedly broadcasting station identification announcements that did not include the station's call letters immediately followed by the station's community of license.

5. Section 503(b) of the Communications Act of 1934, as amended (the "Act")⁵ and section 1.80(a) of the Commission's rules⁶ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Commission's rules shall be liable for a forfeiture penalty.⁷ Based upon the evidence before us, we find that Leighton willfully and repeatedly broadcast station identification announcements in apparent violation of section 73.1201 of the Commission's rules. Section 1.80 of the Commission's rules sets a base forfeiture amount of \$1,000 for the failure to broadcast a compliant station identification announcement. In assessing a monetary forfeiture, we take into account the statutory

³ Letter from John J. Sowada, President, Leighton Enterprises, Inc., to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated December 14, 2004.

⁴ 47 C.F.R. § 73.1201.

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 1.80(a).

⁷ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" merely means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

factors set forth in Section 503(b)(2)(D) of the Act.⁸ Those factors include the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁹ We note that, by Leighton's admission, the violations occurred 21 times per day over a 10-week period and did not terminate until December 7, 2004, after Leighton received the Enforcement Bureau's Letter of Inquiry. Taking into account this fact, and the fact that the station management had been notified of its deficient announcements well before it ceased the violations, we find that under the Commission's case law, the violation justifies an upward adjustment of \$4,000, for a total proposed forfeiture of \$5,000.¹⁰

6. We note Leighton's corrective actions to revise its station identification announcements in order to comply with section 73.1201. As the Commission has held previously, however, a licensee's post-investigation remedial efforts are irrelevant to our consideration of the appropriate penalty in a forfeiture proceeding.¹¹

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311 and 1.80 of the Commission's Rules,¹² Leighton Enterprises, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$5,000 for willfully and repeatedly broadcasting station identification announcements in violation of section 73.1201 of the Commission's rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's rules,¹³ within thirty days of this NOTICE OF APPARENT LIABILITY, Leighton Enterprises, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom,

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 503(b)(2)(D). *See also The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100-01 (1997) ("Forfeiture Policy Statement"), *recon. denied*, 15 FCC Rcd. 303 (1999).

¹⁰ *See Bay Broad. Corp.*, 15 FCC Rcd 9387 (2000) (proposing \$1,500 forfeiture for failure to broadcast sufficient station identification announcements for two days.) (forfeiture paid).

¹¹ *See, e.g., AT&T Wireless Services, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 21866, 21871 (2002); *Mid-Missouri Broadcasting, Inc.*, 19 FCC Rcd 22900 (2004).

¹² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹³ 47 C.F.R. § 1.80.

Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

10. The response, if any, must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

13. IT IS FURTHER ORDERED that the complaint filed on September 1, 2004, IS GRANTED to the extent set forth herein and IS OTHERWISE DENIED.¹⁵

14. IT IS FURTHER ORDERED that this Notice of Apparent Liability for Forfeiture shall be sent, by Certified Mail, Return Receipt Requested, and U.S. First Class mail, to John Wells King, Esq., Garvey Schubert Barer, 5th Floor, Flour Mill Building, 1000 Potomac Street, N.W., Washington, D.C. 20007 and by U.S. First Class mail to Leighton Enterprises, Inc., P.O. Box 1458, St. Cloud, Minnesota 56302.

FEDERAL COMMUNICATIONS COMMISSION

William H. Davenport
Chief, Investigations and Hearings Division

¹⁴ See 47 C.F.R. § 1.1914.

¹⁵ For purposes of the forfeiture proceeding initiated by this NAL, Leighton Enterprises, Inc. shall be the only party.